

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

PCT

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/EP2004/003235

International filing date (day/month/year)
24.03.2004

Priority date (day/month/year)
31.03.2003

International Patent Classification (IPC) or both national classification and IPC
B65D83/20

Applicant
GLAXO GROUP LIMITED

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

10/550884
JC12 Rec'd PCT/PTC 28 SEP 2005
International application No.
PCT/EP2004/003235

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material:
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing:
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/003235

Box No. II Priority

1. ☒ The following document has not been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	9-12
	No: Claims	1-8,13-18
Inventive step (IS)	Yes: Claims	10,12
	No: Claims	1-9,11,13-18
Industrial applicability (IA)	Yes: Claims	1-18
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item V.

1. The following documents are referred to in this communication:
D1 : US 4 860 933 A (MORANE BRUNO ET AL) 29 August 1989 (1989-08-29)
D2: GB-A-1 247 947 (SCOVILL MANUFACTURING COMPANY) 29 September 1971 (1971-09-29)
2. Although claim 1 is drafted as an independent claim, it contains all technical features of claim 17 and is therefore dependent on claim 17.
3. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 17 is not new in the sense of Article 33(2) PCT.
Document D1 discloses (the references in parenthesis applying to this document):

Actuator (8), mounted on a container (101) containing a foamable composition under pressure, the container having a valve stem (107) with an exit opening for the composition at its end remote from the container (101), and which can be moved by application of actuating force to the valve stem, and by which a user can apply actuating force to the dispensing valve,

the actuator comprising,

a flow conduit (114) defining an upstream to downstream flow path for the foamable composition, having a downstream dispensing opening (124) which (conduit) can be mated at an upstream end with the valve stem (107),

the flow conduit (114) being displaceable upon the application of actuating force to the actuator (8) to thereby bear upon a mated valve stem to actuate the valve stem (107),

means (113) to communicate actuating force to the flow conduit (114), a closure (127, 138) adjacent to the dispensing opening (124), wherein in the absence of actuating force the flow conduit (114) is biased into a closed relationship with the closure (127, 138) to obstruct flow of composition through the dispensing opening (124), on the application of actuating force to the flow conduit (114) the flow conduit (114) is displaced to actuate a mated valve stem (107) and the flow

conduit (114) is displaced out of its closed relationship with the closure (127, 138) to allow flow of composition through the dispensing opening.

The subject matter of claim 17 is therefore not new (Article 33(2) PCT).

Document D1 further discloses a dispenser comprising an actuator according to claim 17 mounted on a container containing foamable composition. The subject matter of claim 1 is therefore not new (Article 33(2) PCT).

4. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 18 is not new in the sense of Article 33(2) PCT. Document D1 discloses (the references in parenthesis applying to this document):

Method of dispensing a foamable composition comprising providing a dispenser according to claim 1 and applying actuating force thereto to thereby bear upon the valve stem (107) and open the valve stem (107) to thereby cause the foamable composition to be dispensed from the dispensing opening (124).

The subject matter of claim 18 is therefore not new (Article 33(2) PCT).

5. Dependent claims 2-9, 11 and 13-16 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step (Article 33(2) and (3) PCT), see documents D1 and D2 and the corresponding passages cited in the search report.
6. The combination of the features of dependent claim 10 and consequently claim 12 are neither known from, nor rendered obvious by, the available prior art. A new independent claim containing those features would therefore appear to fulfil the requirements of Article 33 PCT.
7. The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).

INTERNATIONAL SEARCH REPORT

Information on patent family members

International Application No

PCT/EP2004/003235

Patent document cited in search report		Publication date	Patent family member(s)	Publication date
US 4860933	A	29-08-1989	FR 2617809 A1 AT 61310 T CA 1330069 C DE 3861929 D1 EP 0298847 A1 JP 1045283 A JP 2578645 B2	13-01-1989 15-03-1991 07-06-1994 11-04-1991 11-01-1989 17-02-1989 05-02-1997
US 3361301	A	02-01-1968	NONE	
GB 1247947	A	29-09-1971	DE 1908532 A1 JP 49008121 B US 3515316 A	18-09-1969 25-02-1974 02-06-1970